92-285

Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

KEENE CORPORATION,
Petitioner,

V.

THE HONORABLE TONY LINDSAY,
Respondent.

BRIEF IN OPPOSITION FOR RESPONDENTS BENJAMIN AND NEOMA WILLIAMS, ET AL.

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QUESTIONS PRESENTED

1. Whether or not the Texas Supreme Court decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals, so as to invoke the jurisdiction of this Court.

2. Whether or not the Texas Supreme Court erred in dismissing Petitioner's Motion for Leave to file a Petition for Writ of Mandamus against the Honorable Tony Lindsay.

3. Whether or not the Texas Supreme Court decision rests upon independent and adequate state grounds that do not warrant review by this Court.

PARTIES TO THE PROCEEDING

In addition to Petitioner, Keene Corporation, and Respondent, the Honorable Tony Lindsay, real parties in interest to the proceeding include the twenty-two Plaintiffs alleging asbestos-related lung diseases and injuries consolidated in Judge Tony Lindsay's 280th Judicial District Court in Harris County, Texas for trial on the merits. Plaintiffs' Counsel include John Eddie Williams and Melinda Louise Wesner of Umphrey, Williams & Bailey, 8441 Gulf Freeway, Suite 600, Houston, Texas 77017 and the attorneys of the law firm of Ness, Motley, Loadholt, Richardson & Poole, 151 Meeting Street, Suite 600, Charleston, South Carolina 29402.

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BRIEF IN OPPOSITION
FOR RESPONDENTS
BENJAMIN AND NEOMA WILLIAMS, ET AL.

To The Chief Justice and Associate Justices
Of the Supreme Court Of The United States:

Respondents, who are twenty-two Plaintiffs who were consolidated for an asbestos trial in the Honorable Tony Lindsay's 280th Judicial District Court, and Plaintiffs' Counsel, John Eddie Williams and Melinda Louise Wesner, (hereinafter "Respondents"), respectfully oppose a writ of certiorari to the Supreme Court of the State of Texas:

OPINIONS BELOW

This is an original mandamus action that was brought by Keene Corporation seeking to compel the Court of Appeals and Texas Supreme Court to grant a mandamus against the Honorable Tony Lindsay, to mandate that the trial judge vacate a trial court order.

On March 24, 1992, Judge Tony Lindsay signed an order that Keene Corporation shall not place advertisements regarding punitive damages and attorneys fees in reference to asbestos litigation, in any newspaper published in Harris County, Texas until the verdict of the jury was received by the Court. The Order is set forth in the Appendix at p.1.

On March 26, 1992, Keene Corporation, filed a motion for leave to file petition for writ of mandamus and prohibition, in the First Court of Appeals of the State of Texas. On April 1, 1992, Keene Corporation filed an amended petition for writ of mandamus. On April 2, 1992, in a per curiam opinion, the Fourteenth Court of Appeals of the State of Texas, declined Keene's request to order Judge Lindsay to vacate her order, and overruled Keene's motion for leave to file a petition for writ of mandamus and writ of prohibition. The opinions of the Fourteenth Court of Appeals are reproduced in the Appendix at pp.2-5.

On April 7, 1992, the jury concluded their deliberations concerning the asbestos plaintiffs in Judge Lindsay's trial court and rendered a verdict.

Keene Corporation then sought issuance of a writ of mandamus against the Honorable Tony Lindsay from the Texas Supreme Court, alleging Judge Lindsay's decision was arbitrary and unreasonable and that she clearly abused her discretion as a trial court. On April 15, 1992, the Texas Supreme Court dismissed as moot Keene's motion for leave to file petition for writ of mandamus. Reproduced in the Appendix at pp.6-7. Thereafter, on May 20, 1992, the Texas Supreme Court overruled Keene Corporation's motion for rehearing of its motion for leave to file petition for writ of mandamus against Judge Lindsay. Reproduced in the Appendix at pp.8-9.

CONSTITUTIONAL PROVISION

Respondent does not believe that this case involves a federal question or constitutional provision, rather it involves independent State procedural and substantive issues. However, should this Court determine the Texas Supreme Court's decision warrants invoking the jurisdiction of this Court, then Respondents respectfully request this Court consider the Seventh Constitutional Amendment that the right of trial by jury shall be preserved, set forth in the Appendix at p.10.

STATEMENT OF THE CASE

Petitioner has failed to set forth a full statement of the underlying facts that gave rise to this petition. Keene Corporation was an asbestos defendant in a group of six (6) asbestos-related lung disease cases that had been consolidated for trial in Cause No. 85-44379, Orsak v. A C & S, Inc., et al, in the 127th Judicial District Court, Harris County, before Judge Sharolyn Wood. On March 5, 1992, during jury deliberations and after the close of evidence, asbestos-defendant Keene Corporation intentionally placed an advertisement in the Houston Chronicle, reproduced in the Appendix at p.11. Keene's advertisement improperly communicated with the jurors concerning specific questions and issues that were involved in the pending trial and on which the jury was actually deliberating at that very moment. (i.e. punitive damages). Keene further communicated with the jurors concerning issues that were not only inadmissible during the trial of this case, but issues and matters that the Court specifically informed the jurors not to consider. (i.e. attorneys fees) Tex. R. Civ. P. 226a II(8). Although Defendant Keene Corporation represented to the Court that the appearance of this advertisement was a "mere coincidence", on April 8, 1992, Judge Sharolyn Wood ordered Keene Corporation to produce for the Courts' inspection all documents and correspondence concerning Keene's advertising and particularly any tangible thing that would show Keene's intent in placing the advertisement

during jury deliberations and whether it was a "mere coincidence." Judge Wood's April 8, 1992 order is reproduced in Appendix at p.12.

Although Keene Corporation represented it would comply with Judge Woods' document production order, Keene Corporation turned around and filed an appeal, withdrawing its offer. See Appendix at pp.13-14.

Upon reading Keene's quarter-page advertisement in the newspaper and subsequent to oral hearings on the matter, Judge Sharolyn Wood found the following:

> If there were allowed to this court a more sizeable fine that is more commensurate with the harm and the injury done, I would have assessed it. I have assessed the maximum fine as is appropriate under the laws of Texas for the contempt -- criminal contempt that occurred in the jury deliberation process in this case. That to me is absolutely abhorrent of a free society trying to have the kind of jury trial that we had that a (sic) is free from secret evidence, because as I made it very clear today, I see this as an absolute attack on the integrity of trial by jury and trial as we know it in this nation. I take it most seriously.

The Honorable Sharolyn Wood, Judge presiding, on June 11, 1992, in Orsak v. A C & S, Inc., et al, Case No. 85-44379, District Court of Harris County, Texas, 127th Judicial District, imposing the maximum sentence permitted under Texas Law for criminal contempt on Keene Corporation for publishing an advertisement in the Houston Chronicle while

a jury was deliberating after a 30 day trial against Keene Corporation. Excerpt of the proceedings is set forth in the Appendix at pp.15-18.

Judge Wood found that the defendant, Keene Corporation placed an advertisement concerning the merits of the cause on the third day of jury deliberations and that such conduct was an attempted communication in violation of the rules prohibiting parties, their attorneys and others interested in the merits of a case, from communicating with jurors prior to their being excused from the case. See Order of contempt in Appendix at pp.13-14.

To prevent any further jury tampering or improper communications with the jurors, in the next upcoming trial where Keene Corporation was a Defendant, Judge Tony Lindsay entered the March 24, 1992 order of which Keene Corporation now complains. Judge Lindsay's March 24, 1992 order is reproduced in the Appendix at p.1.

Contrary to Petitioner's assertions, Judge Tony Lindsay's order set forth in very explicit and precise language, the specific issues and facts that the Keene Corporation was prohibited from communicating to the Harris County jury until the jury returned its verdict (i.e. punitive damages and attorneys fees).

Respondents submit that Keene Corporation has wholly failed to sustain its burden of proving that Judge Tony Lindsay's decision was arbitrary and unreasonable and that Judge Lindsay abused her discretion. Respondents would further show that the Texas Supreme Court did not err in

dismissing Keene's request for mandamus against Judge Lindsay, that this case is distinguishable from those relied upon by Petitioner, that the Texas Supreme Court's decision does not conflict with other court decisions so as to invoke the jurisdiction of this Court, nor does a federal question exist that would warrant United States Supreme Court review.

REASONS FOR REFUSING THE PETITION

I.

The Texas Supreme Court did not decide a federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals, so as to invoke the jurisdiction of this Court.

Petitioner's complaints do not invoke jurisdiction for review on writ of certiorari for several reasons. First, based upon the particular facts as presented in this case, the Texas Supreme Court did not decide a federal question in a way that conflicts with another state court of last resort or of a United States court of appeals. Second, the Texas Supreme Court did not err in refusing to grant Petitioner's writ of mandamus against Judge Lindsay. Third, the Texas Supreme Court's decision rests upon independent and adequate state grounds that do not warrant review by this Court.

A. Judge Lindsay's Order and the Texas Supreme Court's denial of writ of mandamus is not in conflict with the Maryland Opinion.

Petitioner alleges that Judge Lindsay's order and the Texas Supreme Court's denial of a writ of mandamus against Judge Lindsay, stand in direct contrast to a recent decision of the Maryland Court of Special Appeals. Keene Corp. v. Abate, ___Md. App. ___ (July 1, 1992). This is not true. The sole issue before the Maryland Court was whether the Circuit Court could enjoin Keene from advertising its views on the societal impact of asbestos litigation in general. Not only were the advertisements in question different from one another, but most importantly, the orders of the lower courts are readily distinguishable. The May 13, 1992, Circuit Court of Baltimore City order enjoined Keene from advertising regarding asbestos and/or asbestos litigation. Judge Lindsay's March 24, 1992 order however, was narrowly tailored to restrict Keene's communications with prospective Harris County jurors as to a specific litigant involved in her court and concerning specific issues upon which the jurors would be deliberating. Pursuant to the Plaintiff's pleadings on file before Judge Lindsay, and the evidence to be presented at trial, Judge Lindsay's jury would be required to make a specific finding from the facts as to the issue of punitive damages against litigant, Keene Corporation. Judge Lindsay's order was specifically tailored to restrict Keene's communications with prospective Harris County jurors regarding only two issues: punitive

damages and attorney's fees. The order was narrowly tailored as to subject matter, scope, duration and location.

Keene's previous attempted communications with Harris County jurors clearly violated Texas Procedural and Evidentiary Rules, which exclude evidence from trial concerning collateral sources, insurance, the effect of the jury's answers, and attorneys fees. Tex. R. Civ. P.226a (attorneys fees not admissible in this trial), Tex. R. Civ. Evid. 411 (liability insurance not admissible in this trial).

Keene further attempted to communicate with Harris County jurors concerning particular facts and issues that Keene was not permitted to bring into evidence before the jury in a Texas courtroom. Keene knowingly and intentionally attempted communications with Harris County jurors concerning particular issues Keene could not get into evidence in a Texas courtroom, concerning legal fees, bankruptcy, the effect of asbestos litigation on the nation's economy, and Keene's losses from asbestos lawsuits. See Keene Corporation advertisement reproduced in Appendix at p.11. See also, Tex. R. Civ. Evid. 409, 411, 503, 802 and 805. Keene violated the Texas Rules of Civil Procedure and Evidence, and went around the States' procedural rules so as to interfere with the administration of justice and communicate "secret evidence" to Harris County jurors that Keene knew full well it was not permitted to communicate to the jury in a Texas courtroom. If parties to a lawsuit are permitted to present evidence to a jury through newspapers, then the rules of evidence should be abolished and our history of attempting to preserve a fair trial should be overturned.

Further, the particular issues Keene attempted to communicate to Harris County jurors would have further violated Plaintiffs' Motion in Limine, which excluded such evidence.

B. Keene's Advertising Was False and Misleading

In addition, the particular statements that the Keene Corporation attempted to communicate to Harris County jurors were false and misleading. See Keene advertisement in Appendix at p.11. Keene misleadingly implies that the twelve co-defendants who have filed for "bankruptcy" have done so because of asbestos jury verdicts. Keene fails to state whether the alleged "$500 million in court awards" includes the fines for contempt against Keene or punitive damages findings against Keene. Keene misleads prospective jurors into believing that Keene compensates injured asbestos victims. Keene misleads Harris County jurors into believing that less than half of the alleged $500 million goes to the "injured parties" and that "60 percent goes to lawyers". Keene fails to point out that the majority appears to go to Keene's own lawyers. Keene further denies it did anything "illegal," yet jurors have repeatedly judged Keene's conduct as deserving of punitive damages. Keene further misrepresents that it "doesn't mind paying injured parties" when to this date, Keene still refuses to compensate injured plaintiffs, refuses to negotiate reasonable settlements, intentionally continues to clog the trial dockets unnecessarily, and illegally communicates with jurors.

C. Keene Found in Contempt of Court - Jury Tampering

Judge Lindsay narrowly tailored her order to restrict Keene's communications with Harris County jurors as to two specific issues, so as to achieve the desired objective of preventing Keene's further violation of the Texas Rules of Civil Procedure and Evidence, and to prevent Keene's further interference with fair and impartial jury deliberations. This case is further distinguishable due to other proceedings against Keene that were ongoing at this time in the very same Courthouse.

A Texas District Court Judge made the judicial finding, after briefing and oral argument, that Keene violated state civil procedural laws. See Judge Sharolyn Wood's findings, Order of Contempt, App. pp.13-14 and transcript, App. pp.15-18. Judge Sharolyn Wood of the 127th Judicial District Court found that Keene was interfering with the administration of justice and the state procedural laws governing the jury deliberation process. Id. The District Court further found that Keene's actions were an attack on the integrity of the jury trial and that Keene's conduct was an attempted violation of the States' rules prohibiting parties from communicating with jurors. Id.

Judge Sharolyn Wood further found that Keene caused an advertisement to appear concerning the merits of the case, after the close of evidence and during jury deliberations. Judge Wood held Keene in contempt of court for violating state laws prohibiting attempted communications with jurors,

and imposed the maximum permissible fine for interfering with the administration of justice and an abhorrent attack on the integrity of trial by jury and jury tampering. Id.

Petitioner has failed to show that Judge Lindsay's decision was arbitrary and unreasonable so as to amount to a clear abuse of discretion to warrant a writ of mandamus. Jampole v. Touchy, 673 S.W.2d 569 (Tex. 1984).

D. No conflict exists with other Court decisions so as to invoke jurisdiction of this Court

The Texas Supreme Court did not decide a federal question in a way that conflicts with other courts so as to invoke the jurisdiction of this Court.

This is an original mandamus action which was sought to compel the Texas Court of Appeals and Texas Supreme Court, to issue a writ of mandamus against the Honorable Tony Lindsay of the 280th Judicial District Court, ordering the trial judge to vacate her order of March 24, 1992. Petitioner chose to take this issue up on appeal in the form of a writ of mandamus against Judge Tony Lindsay. As such, Petitioner had the burden of proving that Judge Lindsay's decision was so arbitrary and unreasonable as to amount to a clear abuse of discretion. Joachim v. Chambers, 815 S.W.2d 234 (Tex. 1991). Petitioner has failed to show that Judge Lindsay abused her discretion as a trial judge.

In addition to Petitioner failing to show a clear abuse of discretion under these circumstances, the case law relied

upon by Petitioner in its attempts to invoke jurisdiction of this Court, is not on point and readily distinguishable. Petitioner relies upon Quinn v. Aetna Life & Cas. Co., 482 F. Supp. 22 (E.D.N.Y. 1979), aff'd per curiam, 616 F.2d 38 (2nd Cir. 1980), which was before the Court on Defendant's Motion for Summary Judgment. The Court found that although Plaintiff had sued Aetna Ins. Co. directly, contending "sham defendants," no cause of action existed under New York law for the equitable remedy (injunction) Plaintiff sought and Plaintiff's complaint was dismissed. The Quinn case, supra, did not involve a narrowly tailored order based upon state law, which restricted a contemptuous litigant's communications with jurors during the pendency of an ongoing trial, but rather involved the abstention doctrine and an overly broad injunction and complaint, for which no cause of action nor remedy existed under state law.

Petitioner also relies on Rutledge v. Liability Ins. Industry, 487 F. Supp. 5 (W.D. La. 1979) another motion for summary judgment case where Plaintiff, an attorney, brought suit against a class of insurance companies to enjoin a general campaign concerning tort reform. Again, this was a motion for summary judgment case that did not involve improper communications about specific issues to jurors.

Kemner v. Monsanto Co., 492 N.E.2d 1327 (1986) was also an appeal, not a mandamus as in our case, that involved a dismissal for lack of jurisdiction and forum non convenience. In reaching its conclusion that the trial court's order was overly broad because it prohibited "all mention" of the case to the media, the Court held that a trial court can,

however, restrain parties from making extrajudicial comments about pending civil litigation if the order is not overly broad and the trial court establishes that the conduct poses a reasonable likelihood of a threat to the fairness and integrity of the trial, both of which were found by the Texas District Court Judge(s) herein. Kemner at 1337, 1338.

The NYPIRG case relied upon by Petitioner is again not on point. In NYPIRG v. Insurance Information Institute, 531 N.Y.S. 2d 1002 (Sup. Ct. 1988), Defendant brought a motion to dismiss Plaintiffs deceptive practices and false advertising suit for violation of state statutes based upon Defendant's "lawsuit crisis" advertising campaign. There was no finding by the trial court of interference with the administration of justice, an attack on the fairness and integrity of the trial, a serious and imminent threat to the litigant's right to a fair jury trial, jury tampering, nor contemptuous behavior, as lies in the case before this Court. Further, NYPIRG did not involve a narrowly tailored order, rather a DTPA claim against a general "tort reform" campaign, which was clearly overly broad.

Of interest in the Ruggieri case, also relied upon by Petitioner, the Defendant, Raybestos-Manhattan, was requesting the Court enjoin Plaintiff attorney Ron Motley from participating in any other asbestos litigation or making any extrajudicial comments concerning any asbestos cases. Ruggieri v. Johns-Mansville Prod. Corp., 503 F. Supp. 1036 (D.R.I. 1980). Needless to say, the Defendant's requested remedy was found to be too broad. The Court did state however, that when the trial was reached at some time in the

future, the Court could then assess what, if anything, needed to be done to assure a fair jury trial. Ruggieri at 1041.

Finally, in State v. Cottman Transmission, 542 A.2d 859 (Spec. App. 1988), the trial court's order that "there be no communications with the press" was found to be too sweeping. The Court however, recognized that the Attorney General's authority to protect and warn consumers did not confer upon him the right to "try the case in the press." Id. at 865. The Court found the trial court properly concluded the Attorney General's comments and news releases would seriously undermine the fair administration of justice. Id. The Court therefore, tailored the trail court's gag order so as to prescribe only comments relative to the merits of the case. Similarly, Judge Tony Lindsay narrowly tailored her order so as to preserve the fair administration of justice, prevent further contemptuous behavior by a litigant that was an imminent threat to other litigants' rights to a fair jury trial, and to prohibit only advertisements during the pendency of the trial as to two narrow issues: punitive damages and attorneys fees.

Petitioner has wholly failed to sustain its burden of proving abuse of discretion by Judge Tony Lindsay. To the contrary, the lower courts' found Keene's actions interfered with the fair administration of justice and was contemptuous behavior by a litigant that posed a serious and imminent threat to other litigants' rights to a fair jury trial. Accordingly, Judge Lindsay narrowly tailored an order to restrict Keene's communications with jurors in the pending trial on two specific issues upon which the jurors would

either be deliberating or were impermissible as "secret evidence."

Petitioner has further failed to provide state or federal decisions involving significantly similar factual situations that are inconsistent with the particular facts before the Court in this case. Petitioner has further failed to show how the Texas Supreme Court's refusal to grant Petitioner's requested writ of mandamus against Judge Lindsay was in error or how the Texas Supreme Court's refusal to grant a writ of mandamus conflicts with another Court's decision. Based upon the particular facts of this case, there is no conflict with another Court's decision that would invoke the jurisdiction of this Court concerning the Texas Appellate Courts' declining to grant Petitioner's request for a mandamus against Judge Lindsay.

II.

The Texas Supreme Court did not err in dismissing Petitioner's Motion for Leave to file a Petition for Writ of Mandamus against the Honorable Tony Lindsay.

This case is moot. There is no actual case nor controversy in existence to be reviewed by this Court. Judge Lindsay's March 24, 1992 order was only in effect from March 24, 1992 until the jury ceased deliberations and rendered a verdict, which occurred on April 7, 1992. On March 27, 1992, the Fourteenth Court of Appeals declined to order Judge Lindsay to vacate the order and overruled Petitioner's motion for leave to file petition for writ of

mandamus and prohibition. Although the order was not yet moot, on March 27, 1992, the Fourteenth Court of Appeals clearly declined to issue a writ of mandamus against Judge Lindsay to vacate her order or a writ of prohibition against Plaintiffs' Counsel prohibiting such future orders in asbestos litigation. After the jury returned its verdict and Judge Lindsay's order ceased to be in effect, there was no case nor controversy for the Texas Supreme Court to address by way of a Writ of Mandamus.

This case does not fall within the "capable-of-repetition-yet-evading-review" exception to mootness. It is shear speculation on the part of Petitioner to guess what action, if any, may be taken by another trial judge during future asbestos trials involving Keene Corporation. It would be nothing more than supposition to surmise what Harris County judges may or may not order in future asbestos cases. Contrary to Petitioner's representations to this Court, the vast majority of those asbestos cases set for trial involving Keene Corporation and Plaintiffs' Counsel, John Eddie Williams, as set forth in Exhibit A to Petitioner's Motion for Rehearing have been settled or resolved. See Petitioner's Appendix at pp. 27-33. Of those asbestos cases with trial settings that are listed in Petitioner's Exhibit A, only the last five groups remain, most of which have already been passed. See Petitioner's Appendix at pp. 32-33. There is no evidence of record to even show that this issue will be repeated in the future, that Keene will attempt to violate Texas rules in the future to communicate with deliberating jurors again, nor what action, if any, may be taken by a

District Court judge concerning Keene's contemptuous behavior.

As set forth by this Court in Murphy v. Hunt, 455 U.S. 478, 482-4 (1982) (per curiam), this Court has never held that a mere physical or theoretical possibility was sufficient to satisfy the test stated in Weinstein v. Bradford, 423 U.S. 147, 149 (1975) (per curiam). Murphy at 482. If this were true, virtually any matter of short duration would be reviewable by this Court. Id. Rather, there must be a "reasonable expectation" or a "demonstrated probability" that the same controversy will recur involving the same complaining party. Murphy at 482, citing to Weinstein at 149. There is no comparable set of expectations in this case. The case presented is now moot and was moot at the time of the decision by the Texas Supreme Court.

III.

The Texas Supreme Court's decision rests upon independent and adequate state grounds that do not warrant review by this Court.

The Texas Supreme Court has long recognized that once an appeal is rendered moot, only two exceptions to the mootness doctrine apply so as to confer upon the court jurisdiction to decide the merits of the case. General Land Office v. OXY U.S.A., Inc., 789 S.W.2d 569, 571 (Tex. 1990). As the Texas Supreme Court found in General Land Office, similarly, the controversy before this Court is moot

and does not fall within the exception to normal principles of mootness.

The Texas Supreme Court has not misapplied Texas mootness law by finding this case moot. To the contrary, the Texas Supreme Court accurately applied Texas case law in refusing to grant Petitioner's requested writ of mandamus against Judge Lindsay. Petitioner has failed to show how Judge Lindsay's decision was capricious and arbitrary and a clear abuse of her discretion as a trial judge, so as to warrant a mandamus. Petitioner has further failed to show how this case falls within the "capable-of-repetition-yet-evading-review" exception to the normal principles of mootness so as to warrant review by the Texas Supreme Court.

In addition, the Texas Supreme Court's dismissal of Petitioner's motion for leave to file petition for writ of mandamus against Judge Tony Lindsay rests on independent and adequate state grounds not to warrant this Court's review. In this case, the issue of mootness itself is not a question of federal law, but state substantive and/or procedural law. Petitioner chose to take this issue before the appellate courts in the form of a writ of mandamus and prohibition. Contrary to Petitioner's allegations, the issue of mootness in this case does not constitute a federal question warranting this Court's own independent mootness analysis under federal law. Rather, this is purely a matter of state law, a requested mandamus and Petitioner's burden therein. A careful review of Texas case law, even that relied upon by Petitioner, reveals that the Texas Supreme Court did not

misapply its own procedural rules nor substantive case law on the issue of mootness.

CONCLUSION

Contrary to Petitioner's representations, this case does not present a federal question concerning a litigant's right to comment on political issues during the pendency of the trial. To the contrary, this case involves a narrowly tailored order by a trial court judge seeking to enforce the rules preventing communications by a party to jurors during a jury trial.

The Texas Supreme Court did not decide a federal question in a way that conflicts with other court decisions. The Texas Supreme Court did not err in dismissing Petitioner's motion for leave to file petition for writ of mandamus against the Honorable Tony Lindsay. The Texas Supreme Court's decision clearly rests upon independent and adequate state grounds that do not warrant review by this Court. This case involves false and misleading advertising by a contemptuous litigant, whose conduct violated the State's rules concerning jury tampering, interfered with the administration of justice, was assessed the maximum permissible fine, and now appeals to this Court attempting to invoke jurisdiction under an alleged federal question conflict with other court decisions, which simply does not exist.

For these reasons, Respondents respectfully request that in its judicial discretion, this Court deny Petitioner's request for a review on writ of certiorari.

Respectfully submitted,

By: _____
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NO. 84-69709

BENJAMIN C. WILLIAMS AND NEOMA WILLIAMS	§ § §	IN THE DISTRICT COURT OF
v.	§ § §	HARRIS COUNTY, TEXAS 151ST [sic]
AC&S, INC. ET AL.	§	JUDICIAL DISTRICT

ORDER

BE IT REMEMBERED that on March 16, 1992 commenced the consolidated trial in the 280th District court of the above-named Plaintiffs against the Keene Corporation. From this day until the verdict of the jury is received by this Court, the Defendant Keene Corporation is prohibited from advertising regarding punitive damages and attorney's fees in reference to asbestos litigation, in any newspapers which are published in Harris County, Texas. Attached as Exhibit "A" to this Order is a copy of an advertisement which the Defendant Keene Corporation placed in the *Houston Chronicle*, a Harris County Newspaper, on March 5, 1992. On that same day in Harris County a jury was deliberating in a trial in which the Defendant Keene Corporation was a party. It is therefore,

ORDERED, ADJUDGED AND DECREED that Keene Corporation shall not place advertisements regarding punitive damages and attorney's fees in reference to asbestos litigation, in any newspaper published in Harris County, Texas until the verdict of the jury in the above-referenced cases is received by this Court. The ORDER of MARCH 16, 1992 prohibiting KEENE from advertising is WITHDRAWN.

SIGNED the 24th day of March, 1992.

/s/ TONY LINDSAY
JUDGE PRESIDING

[SEAL OF THE STATE OF TEXAS]

In The
Fourteenth Court of Appeals

NO. C14-92-00312-CV

KEENE CORPORATION, Relator

V.

THE HONORABLE TONY LINDSAY, JOHN EDDIE WILLIAMS, THE ATTORNEYS OF THE LAW FIRM OF UMPHREY, BURROW, WILLIAMS, AND BAILEY and THE ATTORNEYS OF THE LAW FIRM OF NESS, MOTLEY, LOADHOLT, RICHARDSON, AND POOLE, Respondents

ORIGINAL PROCEEDING
WRIT OF MANDAMUS

OPINION

On March 16, 1992, respondent, the Honorable Tony Lindsay, ordered that relator is prohibited from advertising regarding asbestos litigation in any and all newspapers that are published in Harris County, Texas.

Relator asks that we order Judge Lindsay to vacate that order. We decline to do so and overrule the motion for leave to file petition for writ of mandamus.

PER CURIAM

Motion for leave to file Petition for Writ of Mandamus Overruled March 27, 1992 and Opinion filed April 2, 1992.

Panel consists of Justices Junell, Robertson, and Draughn. (Justice Robertson not participating).

Do not publish - TEX. R. APP. P. 90.

[SEAL OF THE STATE OF TEXAS]

In The
Fourteenth Court of Appeals

NO. C14-92-00309-CV

KEENE CORPORATION, Relator

V.

THE HONORABLE TONY LINDSAY, JOHN EDDIE WILLIAMS, THE ATTORNEYS OF THE LAW FIRM OF UMPHREY, BURROW, WILLIAMS, AND BAILEY and THE ATTORNEYS OF THE LAW FIRM OF NESS, MOTLEY, LOADHOLT, RICHARDSON, AND POOLE, Respondents

ORIGINAL PROCEEDING
WRIT OF PROHIBITION

OPINION

On March 16, 1992, respondent, the Honorable Tony Lindsay, ordered that relator is prohibited from advertising regarding asbestos litigation in any and all newspapers that are published in Harris County, Texas.

Relator, in cause no. C14-92-00312-CV, asks that we order Judge Lindsay to vacate that order. In this action, relator asks that we prohibit respondents, John Eddie Williams, the attorneys of the law firm of Umphrey, Burrow, Williams, and Bailey and the attorneys of the law firm of Ness, Motley, Loadholt, Richardson, and Poole, from requesting such an order in future asbestos litigation. Having overruled the motion for leave to file writ of mandamus in cause no. C14-92-00312-CV, we overrule the motion for leave to file petition for writ of prohibition.

PER CURIAM

Motion for leave to file Petition for Writ of Prohibition Overruled March 27, 1992 and Opinion filed April 2, 1992.

Panel consists of Justices Junell, Robertson, and Draughn. (Justice Robertson not participating).

Do not publish - TEX. R. APP. P. 90.

THE SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

April 15, 1992

Mr. James H. Powers
Roberts, Markel, Folger
& Powers
Weslayan Tower, Suite 1010
24 Greenway Plaza
Houston, TX 77046

Mr. Kenneth C. Baker
Roberts, Markel, Folger
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Mr. John E. Williams, Jr.
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& Bailey
8441 Gulf Freeway, Suite
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Houston, TX 77017-5001

Mr. R. Lyn Stevens
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550 Fannin Street
5th Floor, Petroleum Tower
Beaumont, TX 77704

Ms. Melinda L. Wesner
Umphrey, Burrow, Williams
& Bailey
8441 Gulf Freeway, Suite
600
Houston, TX 77017-5001

RE: Case No. D-2264
Style: KEENE CORPORATION
v. THE HONORABLE TONY LINDSAY, JUDGE

Dear Counsel:

Today, the Supreme Court of Texas dismissed as moot relator's motion for leave to file petition for writ of mandamus in the above styled case. (Chief Justice Phillips not sitting.)

Sincerely,

John T. Adams, Clerk

by /s/ BLANCA E. MORIN
Blanca Morin, Deputy

cc: Mr. Joe Cox
Honorable Tony Lindsay

THE SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

May 20, 1992

Mr. James H. Powers
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Mr. Kenneth C. Baker
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Ms. Melinda L. Wesner
Umphrey, Burrow, Williams
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8441 Gulf Freeway, Suite
600
Houston, TX 77017-5001

RE: Case No. D-2264
Style: KEENE CORPORATION
v. THE HONORABLE TONY LINDSAY, JUDGE

Dear Counsel:

Today, the Supreme Court of Texas overruled relator's motion for rehearing of motion for leave to file petition for writ of mandamus in the above referenced case.

Sincerely,

John T. Adams, Clerk

by /s/ COURTLAND CROCKER
Courtland Crocker, Deputy

cc: Mr. Joe Cox
Honorable Tony Lindsay

UNITED STATES CONSTITUTION - AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Legal fees Up, up and away

GLENN W. BAILEY, chairman and president of Keene Corp., isn't the most objective observer of the asbestos lawsuits his company has endured.

But since the company will be shelling out $500 million in legal fees, Bailey does offer a unique insight into America's court system.

In case you missed Bailey's letter to the editor, here is a synopsis. In 1968, Keene bought a small maker of acoustical ceilings, ventilation systems and insulation products for $8 million. Some of that insulation included asbestos. The company ceased production in 1972.

Keene's losses didn't end there. They had just begun. Asbestos led to lawsuits and a whopping $500 million in court awards and legal fees. So far, 12 co-defendants have been bankrupted.

Bailey says he doesn't mind paying injured parties, but the punitive damages and legal fees are absurd. Less than half the $500 million will actually go to anyone injured by asbestos. The rest--60 percent--goes to lawyers.

"A criminal can be punished only once, while a manufacturer might be punished thousands of times for a single act--even though, as in our case, we did nothing that was illegal," Bailey wrote.

That's not justice. It's abuse.

Not only does injustice harm the nation's soul, but its economy as well. Vice President Dan Quayle's Council on Competitiveness found that litigation is now a $300 billion drag on the economy.

That's what happens when you have 70 percent of the lawyers in the world.

The above editorial appeared on December 31, 1991
in West Virginia's Charleston Daily Mail
and is reprinted with its permission.

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"We are encouraged
that the facts are getting through
concerning a serious problem
that affects all Americans."

For further information write to
Keene Corporation
200 Park Avenue, New York, NY 10166